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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/438,955	11/12/99	VON WURTEMBERG	R 21513

MMC1/0424

LAWRENCE E LAUBSCHER JR  
LAUBSCHER & LAUBSCHER  
SUITE 300  
745 SOUTH 23RD STREET  
ARLINGTON VA 22202

EXAMINER

JACKSON, C

ART UNIT

PAPER NUMBER

2881

DATE MAILED:

04/24/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/438,955

Applicant(s)

VON WURTEMBERG ET AL.

Examiner

Cornelius H. Jackson

Art Unit

2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on 30 December 1999 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-7, 9-13 and 15-17 are rejected under 35 U.S.C. 102(a) as being anticipated by Lin et al. (5838708). Lin et al. discloses a surface emitting laser with a monitor (**Title**) comprising: a plurality of spaced apart mirrors **202 and 206**, a light amplifying region between the mirrors **204**, a substrate **212**, and a photon transparent ohmic contact for passing light energy therethrough whereby light emission through said surface emitting laser may be monitored, **see column 3, line 64 through column 4, line 53**.

In regard to claims 2-3, 5 and 9-10, Lin et al. teaches all stated limitations, **see column 3, line 64 through column 4, line 53**.

In regards to claim 4, Lin et al. teaches all stated limitations, **see column 1, lines 25-55 and Fig. 1**.

In regards to claim 6, Lin et al. teaches all stated limitations, **see column 5, lines 5-10**.

In regards to claim 7, Lin et al. teaches all stated limitations, **see column 4, lines 64-65**.

In regard to claims 11-13 and 15-17, the method of forming a device is not germane to the issue of patentability of the device itself, since the device is obtained by the method of forming.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin et al. Lin et al., as applied above, discloses the claimed invention except for the ohmic contact comprising indium tin oxide. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used indium tin oxide if so desired to suite production costs or whatever the case maybe, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

In regards to claim 8, the method of forming a device is not germane to the issue of patentability of the device itself, since the device is obtained by the method of forming.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cornelius H. Jackson whose telephone number is

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(703)306-5981. The examiner can normally be reached on 8:30 - 4:00, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa M. Arroyo can be reached on (703)308-4782. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7722 for regular communications and (703)308-7721 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

chj

April 18, 2001



TERESA M. ARROYO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800